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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,661	10/27/2000	Sydney R. Rader	660005.99621	5573

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David G. Ryser
Quarles and Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497

EXAMINER
SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
1761	7

DATE MAILED: 10/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

A S-7

Office Action Summary	Application No.	Applicant(s)	
	09/698,661	RADER ET AL.	
	Examiner	Art Unit	
	Curtis E. Sherrer	1761	

-- Th MAILING DATE of this communication app ars on the cov r sh t with th correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 July 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) *12-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-11 are indefinite because the scope the phrase "hop solids" is not known. A review of the specification, page 7, shows that "hop solids are those solids which remain after substantially all of the alpha acids, beta acids, and hop oils have been removed from hops by a solvent . . . ." Because the scope the phrase "substantially all . . ." is not known, the scope the phrase "hop solids" is not known

Claims 2, 7 and 11 are indefinite because the scope of the word "hot" is unknown.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldstein *et al.* (USPN 5,972,411)(hereinafter Goldstein).

Goldstein teaches the production of a beer additive produced from "hop solids" (that have been extracted with carbon dioxide). The hop solids are extracted with aqueous alcohol that "contains 0.1% to 100% v/v water . . . ." Col. 2, lines 33-35. Also see col. 5, lines 28-30. The aqueous alcohol therefore reads on a polar solvent. Goldstein teaches that a purifying step is conducted on the aqueous extract by use of a chromatography column. Col. 2, lines 37-54. Then a conversion step is performed whereby glycosides are converted to aglycones, which can be done by acid/heat hydrolysis. Col. 2, line 63 to col. 3, line 5 and col. 10, lines 4-34.

Goldstein does not teach the washing of the converted extract with a non-polar solvent that is capable of removing residual alpha acids. While the purer forms of known products may be patentable, the mere purity of a product by itself does not render the product unobvious. *Ex parte Gray,* 10 USPQ2d 1922 (BPAI 1989). Also see MPEP 2144.05. Hexane is a notoriously well known non-polar hop extractant and it would have been obvious to those of ordinary skill in the art to purify the product of Goldstein with hexane because Goldstein teaches the purification of the hop solid extract.

Goldstein does not state that the final product is dried or frozen but these are notoriously well known forms of hop products. Further Goldstein does teach the addition of the hop product to wort which will then be fermented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vitzthum et al. (USPN 4,104,409) teaches the production of spray or freeze-dried hop extracts (col. 3, lines 52-65).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Curtis E. Sherrer
Primary Examiner
October 4, 2002